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Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to General Assembly resolution 48/141, considers the impact of austerity measures on economic, social and cultural rights, in particular on the right to work and the right to social security, with a specific focus on women, migrants and older persons. It also lays out the criteria States should apply when considering the adoption of austerity measures.

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I. Introduction

1. In 2008 the world suffered what is considered to be the worst global economic crisis since the "Great Depression" of the 1930s. The origins of the crisis are complex and reflect systemic flaws in the national and international financial architecture. Major contributing factors include the inadequacy of existing regulation and its failure to adapt to a constantly evolving and increasingly interconnected global financial system, a lack of policy coherence vis-à-vis international human rights obligations, as well as a general lack of transparency and accountability. While some recovery seemed to be under way in 2010, the global economy slowed down markedly in 2011 in what is viewed as the second phase of the crisis, with particular effect in countries of Southern Europe. Presently, developed countries continue to struggle to counter the economic damage suffered, while developing countries are faced with continued uncertainty and diminished growth prospects.

2. As a result of the crisis and the threat posed to national economies by the potential collapse of systemically important financial institutions, States spent enormous sums of money bailing out these institutions.[1] Many States adopted contractionary measures ("austerity measures") intended to combat budget deficits that had been augmented by the crisis and the resultant bail-outs themselves. In this context, the imposition of "austerity measures" by States further exacerbated the impact of the global financial crisis, thereby stalling recovery. Consequently, the ability of individuals to exercise their human rights, and that of States to fulfil their obligations to protect those rights, has been diminished. This is particularly true for the most vulnerable and marginalized groups in society, including women, children, minorities, migrants and the poor, who suffer from decreasing access to work and social welfare programmes, and reduced affordability of food, housing, water, medical care and other basic necessities. The negative impacts of the financial crisis and subsequent austerity measures are also seen to exacerbate existing structural inequalities.

3. As such, austerity measures raise important concerns regarding the protection of economic, social and cultural rights, including with regard to the principles of non-retrogression, progressive realization, non-discrimination and minimum core obligations. In recognition of the impacts of the global financial crisis and austerity policies on employment, social welfare expenditures, and human rights generally, the Committee on Economic, Social and Cultural Rights recently addressed a letter[2] to all States to remind them of their obligations to use the maximum available resources to fulfil economic, social and cultural rights, even in times of crisis.

4. In addition to negatively impacting the realization of fundamental human rights, austerity measures have also failed to contribute to economic recovery. The International Labour Organization World of Work Report 2012 found that, in States which have pursued austerity, economic growth and employment rates have continued to deteriorate, thereby reducing purchasing power and consumption. In other words, the recent imposition of austerity policies in response to the debt crisis has failed in its aim to promote economic growth and investment by reducing fiscal deficits. Furthermore, serious concerns remain regarding the adequacy of current efforts to address the root causes of the financial crisis,

[1] Between 2008 and 2011, European countries spent 4.5 trillion euros or 37% of the European Union's economic output on financial industry bailouts. *See* "UN experts call for EU banking sector reform in line with States' human rights obligations" (5 October 2012) at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12630&LangID=E.

[2] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012, http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf

including, inter alia, deregulation, rising global inequalities, power imbalances, and defective and unrepresentative systems of financial governance.[3]

5. In developing countries, many of which weathered the initial financial crisis relatively unscathed, austerity is now being applied for "pre-emptive reasons" i.e. fiscal deficits are being reduced to avert negative reactions from financial markets. The current policy response to the financial crisis threatens government expenditure when and where it is most needed, based on the questionable premise that austerity measures will stabilize economies and facilitate economic growth leading to job creation. By contrast, human rights advocates have encouraged a rights-based response that supports the protection of economic and social rights through investing in social and economic programmes, while simultaneously stimulating the economy. Such measures also help build national stability by reducing the likelihood of political unrest (and potentially repressive responses) and strengthening the legitimacy of governments.

6. A human rights-based response to the economic crisis would call for accountability in the public and private sectors, social investment, improved job training and job creation policies, and a sound social security system. This approach derives from the right of all persons to an adequate standard of living, as articulated in the Universal Declaration of Human Rights, international human rights treaties and International Labour Organization (ILO) conventions.

7. Policy responses to economic crisis should be formulated and implemented within the parameters of international human rights law. Austerity measures which reduce spending for critical social welfare programmes during times of crisis can undercut human rights norms and threaten the most vulnerable members of society.

II. Normative framework

A. Economic, social and cultural rights

8. All economic, social and cultural rights, including the rights to health, food, water, work, social security and education, are directly affected by austerity measures. Such cuts weaken safety nets and hamper realization of these rights. The International Covenant on Economic, Social and Cultural Rights provides that measures to achieve the full realization of the right to health include "the creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12(2)(d)). General comment No. 14 (2000) on the right to health[4] of the Committee on Economic, Social and Cultural Rights elaborates that the State obligation to fulfil this right includes "the provision of a public, private or mixed health insurance system which is affordable for all" (para. 36).

9. General comment No. 12[5] of the Committee on Economic, Social and Cultural Rights provides that "whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil that right directly." The Committee proposes that one measure for realizing the right to food is to develop a national strategy which addresses "all aspects of the food system, including … social security" (para. 25), and that should a State party argue that resource constraints make it impossible to provide access to food for those who are

[3] See Joseph Stiglitz, http://www.bloomberg.com/news/2011-05-13/nobel-winner-stiglitz-warns-job-killing-austerity-measures-hurt-economies.html

[4] General comment No. 14, para. 36.

[5] General comment No. 12 (1999) on the right to adequate food, paras. 25 and 17.

unable by themselves to secure such access, the State must demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, the minimum essential level required to be free from hunger (para. 17).

10. The Convention on the Rights of the Child obliges States to take measures to make secondary education accessible to every child, including through "offering financial assistance in case of need", in addition to the effort to make secondary education free. (art. 28(1)(b)).

11. As the Committee on Economic, Social and Cultural Rights has clarified in its general comment No. 18 (2005) on the right to work (para. 4), even where a State has put in place all the necessary measures and deployed the maximum of its available resources to create employment opportunities, a part of the population may still fail to secure employment. This could be due to reasons beyond State control, including international macroeconomic factors. In these circumstances, the right to social security requires the State to ensure the protection of those who cannot secure employment. The right to social security therefore functions as a buffer, providing a means of subsistence and allowing a life of dignity for those who are jobless or cannot otherwise secure an adequate income.

12. The right to work and the right to social security are integral to the right to an adequate standard of living as enshrined in article 11.1 of the International Covenant on Economic, Social and Cultural Rights: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

13. Austerity measures often have the effect of causing retrogression in the enjoyment of economic, social and cultural rights. Cuts to public spending on programmes that benefit the poor can impact inter alia the rights to education, health, food, water and social security. Decreases in public expenditure have led to cutbacks in employment in the State sector and State-sponsored projects, resulting in increased levels of unemployment.[6]

14. High levels of unemployment[7] in turn create a rise in the levels of extreme poverty, which negatively impacts the realization of a wide range of human rights.[8] Such cuts disproportionately affect the poorest and most vulnerable in a society, especially those who rely more heavily on welfare benefits, because they spend a higher proportion of their income on food and basic services. During times of economic crisis, the poor are often forced to cut back on the basic necessities of life, such as food, water and health care, thus severely undermining the realization of their basic human rights.

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[6] An example of this is the 23% unemployment rate in Spain, the highest in the developed world, National Institute of Statistics (INE): Encuesta de Población Activa, available at http://www.ine.es/daco/daco42/daco4211/epa0312.pdf.

[7] ILO, World of Work Report 2012 "Better Jobs for a Better Economy", 50 more million people without a job in 2011-2012, p. 1.

[8] United Nations Independent Expert on the question of human rights and extreme poverty, Maria Magdalena Sepúlveda Carmona, "The human rights based approach to recovery from the global economic and financial crises, with a focus on those living in poverty" (A/HRC/17/34); Mary O'Hara, "Magdalena Sepúlveda: 'Austerity is devastating the world's poorest'", The Guardian, 26 February 2013, available at http://www.guardian.co.uk/society/2013/feb/26/magdalena-sepulveda-austerity-devastating-worlds-poorest.

B. Human rights compliance criteria for the imposition of austerity measures

15. Where austerity measures result in retrogressive steps affecting the realization or implementation of human rights, the burden of proof shifts to the implementing State to provide justification for such retrogressive measures. In ensuring compliance with their human rights obligations when adopting austerity measures, States should demonstrate: (1) the existence of a compelling State interest; (2) the necessity, reasonableness, temporariness and proportionality of the austerity measures; (3) the exhaustion of alternative and less restrictive measures; (4) the non-discriminatory nature of the proposed measures; (5) protection of a minimum core content of the rights; and (6) genuine participation of affected groups and individuals in decision-making processes.

1. The existence of a compelling State interest

16. Under the Covenant on Economic, Social and Cultural Rights, the compelling interest criteria will be assessed "by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources". The State will only be able to show that austerity measures are justified when factors beyond its control have led to a decrease in the available resources, and thus to the need to reduce some benefits of those who are in a better-off position, in order to maintain the existing level of enjoyment of the rights recognized in the Covenant for the more vulnerable. The State cannot justify austerity measures simply by referring to fiscal discipline or savings: it needs to show why the austerity measures were necessary for the protection of the totality of the rights provided for in the Covenant.

2. The necessity, reasonableness, temporariness and proportionality of the austerity measures

17. Austerity measures should be temporary measures covering only the period of crisis. They should be necessary, reasonable and proportionate, in the sense that the adoption of any other policy, or failure to act, would be even more detrimental to the realization of human rights.[9]

3. Exhaustion of alternative and less restrictive measures

18. States bear the burden of proving that austerity measures have been introduced after the most careful consideration of all other less restrictive alternatives,[10] including adjustments in tax policy, for example.

4. Non-discriminatory nature of the measures adopted

19. Austerity measures may not be introduced or applied in a discriminatory manner. States, when adopting austerity measures, should ensure that they are not directly or indirectly discriminatory, either in intent or effect.[11]

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[9] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012; Statement by Mr. Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, 67th Session of the United Nations General Assembly 2012, 23 October 2012, New York.

[10] Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 45; Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

[11] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

5. Protection of a minimum core content of the rights

20. Austerity measures should identify and ensure the maintenance of a minimum core content of the rights (especially for disadvantaged and marginalized groups),[12] for example, through the establishment of a "social protection floor" and ensure protection of this core content at all times.[13] A social protection floor ensures access to basic social services, shelter, food, health care, and empowerment and protection of the poor and vulnerable.[14]

6. Genuine participation of affected groups and individuals

21. Participation is a fundamental human rights principle and it requires States to enable rights-holders to express their needs and concerns, and to influence decision-making. The degree of genuine participation of affected groups and individuals in examining the proposed austerity measures and alternatives is highly relevant to the necessity and permissibility of those measures.[15]

III. Focus on the right to work and the right to social security

A. The content of the rights

1. Right to work

22. Several international instruments deal with the right to work.[16] The Universal Declaration of Human Rights recognizes that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (art. 23, para. 1). The right to work is essential for realizing other human rights and constitutes an inseparable and inherent core of human dignity. Work usually provides livelihood, and insofar as work is freely chosen or accepted, it contributes to self-development and recognition within the community.

23. The International Covenant on Economic, Social and Cultural Rights guarantees the right to work[17] (art. 6) and the enjoyment of just and favourable conditions of work,

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[12] Committee on Economic, Social and Cultural Rights, concluding observations on the fifth report of Spain, adopted by the Committee at its 48th session (E/C.12/ESP/CO/5).

[13] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012. See further: Committee on Economic, Social and Cultural Rights, concluding observations on the fourth report of Iceland, adopted by the Committee at its 49th session (E/C.12/ISL/CO/4).

[14] Office of the High Commissioner for Human Rights (OHCHR), "Report on the impact of the global economic and financial crises on the realization of all human rights and on possible actions to alleviate it" (A/HRC/13/38), paras. 21 and 25.

[15] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

[16] Several regional instruments recognize the right to work, including the European Social Charter of 1961 and the Revised European Social Charter of 1996 (part II, art. 1), the African Charter on Human and Peoples' Rights (art. 15) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 6).

[17] The right to work is further guaranteed under the International Covenant on Civil and Political Rights (art. 8, para. 3 (a)); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5, para. (e) (i)); the Convention on the Elimination of All Forms of Discrimination against Women (art. 11, para. 1 (a)); the Convention on the Rights of the Child (art. 32); the Convention on the Rights of Persons with Disabilities (art. 27); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 11, 25, 26, 40, 52 and 54).

including the right to safe working conditions (art. 7), to form or join a trade union, and free functioning of trade unions (art. 8).

24. The International Labour Organization has adopted a wide range of instruments relevant to the right to work, including the Declaration on Fundamental Principles and Rights at Work (1998). It has formulated the concept of "decent work," based on the understanding that work is a source of personal dignity, family stability, peace in the community, stronger democracies, and economic growth that expands opportunities for productive jobs and enterprise development.[18]

25. The Committee on Economic, Social and Cultural Rights has further elaborated in its general comment No. 18 (2005) on the right to work, stating that decent work underpins the fundamental rights of individuals, provides an income allowing workers to support themselves and their families, and includes respect for the physical and mental integrity of the worker in the exercise of her/his employment (para. 7).

26. According to the Committee on Economic, Social and Cultural Rights in the same general comment, States should take measures to reduce, to the extent possible, the number of those employed outside the formal economy, as these workers lack protection. Work must be available, accessible without discrimination on any grounds, and acceptable to the individual worker. Again, the State has an immediate obligation to guarantee that the right to work will be enjoyed without discrimination, and to take deliberate, concrete, targeted steps towards the realization of the right to work and full employment.

27. Also in general comment No. 18, the Committee on Economic, Social and Cultural Rights underlines that "the right to work requires formulation and implementation by States parties of an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting labour requirements and overcoming unemployment and underemployment. It is in this context that effective measures to increase the resources allocated to reducing the unemployment rate, in particular among women, the disadvantaged and marginalized, should be taken by States parties" (para. 26).

28. Therefore, what should be ascertained is whether austerity measures that have led to cutbacks in employment in the economy at large, in the State sector and in State-sponsored projects are compatible with the State's obligation to formulate and implement an employment policy to reduce the unemployment rate without discrimination, in particular among women, the disadvantaged and marginalized.

2. Right to social security

29. Social security is widely recognized as an essential tool for reducing and alleviating poverty and promoting social inclusion.

30. The right to social security for all is recognized in numerous human rights instruments including the Universal Declaration of Human Rights (art. 22) and the International Covenant on Economic, Social and Cultural Rights (arts. 9 and 10). Article 10 of the Covenant sets out the right to social security benefits for mothers during a reasonable period before and after childbirth. Article 11 of the Convention on the Elimination of All forms of Discrimination against Women recognizes the right to social security for women, especially in cases of retirement, unemployment, sickness, invalidity, old age or other incapacity. In addition, article 11 recognizes the right to paid leave. Article 26 of the Convention on the Rights of the Child recognizes the right of the child to social security

[18] ILO, Decent work agenda, see http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm.

and social insurance. Article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out the right of all migrant workers to social security on an equal footing with nationals, as well as to reimbursement of contributions if they cannot access benefits. Article 28 of the Convention on the Rights of Persons with Disabilities recognizes the right of persons with disabilities to social protection without discrimination on the basis of disability and enumerates steps to be taken by States to safeguard and promote the realization of this right.

31. According to general comment No. 19 of the Committee on Economic, Social and Cultural Rights, social security is of central importance for guaranteeing a life in dignity for all, when faced with circumstances that affect the full exercise of their Covenant rights.[19] The right to social security encompasses the right to access and maintain benefits without discrimination in order to secure protection from, inter alia, the lack of a work-related income due to sickness, disability, maternity, employment injury, unemployment, old age or death of a family member, unaffordable access to health care or insufficient family support, particularly for children and adult dependants.[20]

32. The right to social security should be enjoyed equally between men and women as outlined in article 2.2 (on non-discrimination) and article 3 (on the equal enjoyment of economic, social and cultural rights) of the Covenant on Economic, Social and Cultural Rights.

33. Social security can be provided in various ways and international standards do not prescribe a particular system.[21] The Committee on Economic, Social and Cultural Rights has interpreted the term "social security" to encompass protection from all the risks involved in the loss of means of subsistence for reasons beyond a person's control. According to the Committee, a social security system should include non-contributory schemes, such as universal approaches, since it is unlikely that every person can be adequately covered by a contributing or an insurance-based system.[22]

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[19] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, para. 1.

[20] Ibid., para. 2.

[21] ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security defines social security as the protection society provides for its members through a series of public measures against economic and social distress that would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age or death. These measures include the provision of medical care and the provision of subsidies for families with children. A number of ILO Conventions set out in more detail what the right entails, what the protection is, who is entitled to the social security and under what circumstances, as well as the level of minimum benefits. The relevant ILO Conventions include: Nos. 24 and 25 (1927) concerning Sickness Insurance; Nos. 37 and 38 (1933) concerning Invalidity Insurance; Nos. 39 and 40 concerning Compulsory Widows' and Orphans' Benefits (1933); No. 42 (revised, 1934) concerning Workmen's Compensation for Occupational Diseases; No. 118 (1962) concerning Equality of Treatment of Nationals and Non-Nationals in Social Security; No. 121 (1964) concerning Benefits in the Case of Employment Injury; No. 128 (1967) concerning Invalidity, Old-Age and Survivors' Benefits; No. 130 (1969) concerning Medical Care and Sickness Benefits; No. 157 (1982) concerning Maintenance of Social Security Rights; and No. 168 (1988) concerning Employment Promotion and Protection Against Unemployment.

[22] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, para. 4(b).

34. Motivated by findings that 80 per cent of the world's population,[23] many of them older persons, lack access to any kind of social security, a number of United Nations organizations, led by the International Labour Organization, developed a framework for policy design known as the social protection floor, anchored in the right of everyone to social security and a basic standard of living that guarantees their health and well-being.

35. In the face of widespread inequality and poverty, the initiative suggests the adoption of a set of policies aimed at integrating key social areas with access to essential services at all ages. The social protection floor attempts to guarantee basic income security by means of old-age and disability pensions and universal access to essential health services, defined according to national priorities. The policy calls for guaranteeing every individual a minimum income level of, and access to, basic social services.

36. Austerity measures endanger social protection schemes, including pensions, thereby dramatically affecting the enjoyment of the rights to social security and to an adequate standard of living.[24]

B. States' obligations

1. Progressive realization

37. According to article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, economic, social and cultural rights, including the right to work and to social security, require States to "take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

38. According to the Committee on Economic, Social and Cultural Rights "the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time." (general comment No. 3, para. 9).

39. However, "the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world … On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear

[23] Michael Cichon and Krzysztof Hagemejer, "Social Security for All: Investing in Global and Economic Development. A Consultation", Discussion Paper 16, Issues in Social Protection Series, ILO Social Security Department, Geneva, 2006.

[24] In some countries, courts have reviewed the constitutional validity of those measures. For example, in Latvia, the Parliament voted in December 2009 to further shrink the 2010 budget through spending cuts and tax increases, including a 10 per cent decrease in pensions and a 70 per cent decrease for working pensioners. Later that month, the Constitutional Court ruled that the pension cuts were unconstitutional on the grounds that they violated the right of residents to social security. As a result, the cuts had to be reversed. In Romania, 15 per cent pension cuts proposed in May 2010 were declared unconstitutional the following month. Although pensions partly funded by worker contributions are constitutionally protected, the Government had circumvented this protection on the grounds of a separate constitutional article allowing the temporary limitation of certain rights in order to defend national security. United Nations Development Programme (UNDP)/Bratislava Regional Centre for Public Administration Reform (RCPAR), 2011, "Economic Crisis Responses from a Governance Perspective in Eastern Europe and Central Asia: Regional Report", pp. 15-16.

obligations for States parties ... It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal." (para. 9). Thus, progressive realization also means a pattern of improvement or advancement, which entails the obligation to ensure a broader enjoyment of the rights over time. The Committee stressed that steps taken to achieve the full realization of the rights "should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant" (general comment No. 3, para. 2).

2. Prohibition of retrogressive measures

40. The duty to progressively fulfil economic, social and cultural rights implies a prohibition of measures that would diminish realization of the rights guaranteed by the Covenant, except when justified by certain strict criteria.

41. A retrogressive measure is one that, directly or indirectly, leads to backward movement in the enjoyment of the rights recognized in the Covenant. For example, to ensure progressive realization and avoid retrogression, States must ensure that their policies and actions do not reduce access to social security benefits. This includes, for instance, not restricting the eligibility criteria or the amount of social benefits.

42. As stated by the Committee on Economic, Social and Cultural Rights in its general Comment No. 3, any deliberately retrogressive measures "would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources" (para. 9).

43. Several other general comments issued by the Committee on Economic, Social and Cultural Rights apply this notion to concrete rights included in the Covenant, and consider that the adoption of deliberately retrogressive measures constitutes a prima facie violation of the Covenant.[25]

3. Core minimum obligations

44. General comments Nos. 14, 15, 17 and 19 make a further point:[26] the absolute prohibition of retrogressive measures that are incompatible with the core obligations determined for each right. The notion of minimum core obligations is considered a common element of all Covenant rights.[27] Thus, States would have no justification for the adoption of austerity or other measures that limit existing minimum levels of enjoyment of these rights.

45. In 2007, the Committee adopted a statement called "An evaluation of the obligation to take steps to the 'maximum of available resources' under an Optional Protocol to the

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[25] General comment No. 4 (1991) on the right to adequate housing, para. 11, general comment No. 12 (1999) on the right to adequate food, para. 19; general comment No. 13 (1999) on the right to education, paras. 45 and 49, general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 32, 48 and 50; general comment No. 15 (2002) on the right to water, paras. 19, 21 and 42; general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, paras. 27 and 42; general comment No. 18 (2005) on the right to work; paras. 21 and 34, general comment No. 19 (2008) on the right to social security, paras. 42 and 64, and general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 65.

[26] General comment No. 14, para. 32; general comment No. 15, para. 42; general comment No. 17, para. 42; general comment No. 19, para. 64.

[27] See general comment No. 3, para. 10.

Covenant".[28] The statement provides further elements for the interpretation of the prohibition of retrogression. It confirms that the Committee will adopt a strict standard of scrutiny when retrogressive measures concern the enjoyment of the minimum core content of the Covenant,[29] and that this consideration applies to all the rights included in the Covenant.

4. Maximum available resources

46. In order for a State to be able to attribute its failure to meet its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.[30] In addition to meeting core obligations, maximum available resources must be fully used to progressively realize all levels of human rights in a way that guards against retrogressive steps or impacts and maintains the status quo for the broader range of human rights obligations.[31]

5. Prohibition of discrimination

47. Moreover, retrogressive measures cannot be introduced or applied in a discriminatory manner[32] whether directly or indirectly, either in a formal or substantive manner.[33] This principle requires that any discriminatory practices related to laws or policies that distinguish between groups on grounds such as sex, race, ethnicity or religion, be eliminated immediately.

48. This prohibition of discrimination extends beyond a mere negative duty to avoid overtly discriminatory practices. It requires respect for all groups and individuals and when resources are limited, the State has a positive duty to adopt measures to protect those most at risk.[34] Such measures may include taxation and social transfers aimed at mitigating inequalities that arise or are exacerbated in times of crisis.[35] The Committee on Economic, Social and Cultural Rights has also emphasized that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others".[36]

IV. Focus on specific groups

49. During times of economic and financial crisis, austerity measures are seen to have significant and disproportionate negative impacts on disadvantaged and marginalized

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[28] E/C.12/2007/1, paras. 9 and 10.

[29] Ibid., para. 10 (b).

[30] Radhika Balakrishnan, Diane Elson, James Heintz and Nicholas Lusiani, "Maximum Available Resources & Human Rights", Center for Women's Global Leadership, Rutgers University, 2011.

[31] See further, Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 45; Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

[32] Committee on Economic, Social and Cultural Rights, concluding observations on the fourth report of Iceland, adopted by the Committee at its 49th session, 11 December 2009 (E/C.12/ISL/CO/4). See also: Ignacio Saiz, "Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis", *Journal of Human Rights Practice* (2009) vol. 1, No. 2, pp. 277-293, p. 283.

[33] Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

[34] Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 13.

[35] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012; Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth report of Iceland, adopted by the Committee at its 49th session, 11 December 2009, E/C.12/ISL/CO/4.

[36] Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 11.

individuals and groups, such as the poor, women, children, persons with disabilities, older persons, people with HIV/AIDS, indigenous peoples, ethnic minorities, migrants, refugees, and the unemployed.[37]

50. This section of the report will focus on some of these groups to illustrate the possible implications of austerity measures, in particular on their enjoyment of the right to work and social security.

A. Women

51. According to the International Labour Organization (ILO), women experience systemic barriers in almost every aspect of employment, including with regard to the type of work they obtain or are excluded from, the availability of support such as childcare, the level of pay, conditions of work, access to higher-paying traditionally "male" occupations, job security, pension entitlements, benefits, and the time, resources or information necessary to enforce their rights. Women make up the majority of the poor in both developed and developing nations, and they face multiple barriers to accessing social security due in part to their roles as mothers and carers, or as informal workers, migrants, precarious and part-time workers.[38]

52. In its general comment No. 18, the Committee on Economic, Social and Cultural Rights underlines the need for "a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. In particular, pregnancies should not constitute an obstacle to employment, and should not constitute justification for loss of employment".[39]

53. The ILO World of Work Report 2012 highlights the fact that women have a higher probability than men of finding themselves in vulnerable employment situations or of being unemployed.[40] Moreover, during periods of crisis, women tend to assume a heavier load of unpaid work and family care.

54. According to the Committee on Economic, Social and Cultural Rights, differences in the average life expectancy of men and women need to be taken into account in the design of social security schemes, since they can lead to de facto discrimination against women. Because of combining work with care responsibilities, women are more likely to have access to precarious or unprotected jobs, and their contributions to pension schemes tend to be lower and more scattered. This may result in lower pensions for women, or in the impossibility for them to comply with the eligibility criteria for a contributory pension. In both cases, their longer life expectancy makes it more likely that older women will live in poverty. Non-contributory schemes should take into account this fact, and that women often have the sole responsibility for the care of children and elders. Thus, relying only on contributory pension schemes can result in gender inequalities being accentuated.

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[37] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012; Statement by Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, 67th Session of the United Nations General Assembly 2012, 23 October 2012, New York; Committee on Economic, Social and Cultural Rights, Concluding observations on the fifth report of Spain, adopted by the Committee at its 48th session, 6 June 2012 (E/C.12/ESP/CO/5).

[38] ILO, "Gender equality at the heart of decent work", report for the 98th Session of the International Labour Conference, 2009.

[39] Committee on Economic, Social and Cultural Rights, general comment No. 18, para. 13.

[40] ILO, World of Work Report 2012, "Better Jobs for a Better Economy", p. 25.

55. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 27 on older women and protection of their human rights, further discusses discrimination that older women face. Women are less present in the formal sectors of employment, and tend to be paid less for the same work or work of equal value. The Committee on the Elimination of Discrimination against Women stresses that such gender-based discrimination throughout a woman's life has a cumulative effect in old age, leading to disproportionally low incomes and a low or even no pension, compared to men.[41]

56. Austerity measures include cuts in social spending, which tend to have a greater impact on women's and girls' access to education and health services. Trends indicate that more girls than boys are withdrawn from school to help with household work, reinforcing the gender gaps in education.[42]

57. Cuts in social spending and benefits have a dramatic effect on single women with children, pushing them further into poverty, as they are often dependent on social security or low incomes. The health, education and wellbeing of their children are also affected,[43] thereby contributing to the cycle of poverty.

58. Women and girls are affected in the long term because of strategies adopted by households to cope with loss of income in the absence of external support. For example, pregnant women, especially in disadvantaged communities, tend not to use medical services that have become unaffordable, and at the same time are more likely to fall ill because of poorer nutrition levels. Maternal mortality also rises as more births may be unattended.[44]

59. There is increasing evidence that some reductions in public spending have the effect of reducing services for women experiencing domestic violence.[45] Paid work or social protection benefits provide a livelihood for women and their families, affording them a degree of independence. This enhances women's ability to escape poverty and potentially abusive environments, crowded living conditions, limited scope of action, and psychological strain. Access to paid work provides women with better bargaining power or the option to leave an abusive relationship.[46]

B. Migrants

60. The economic crisis has exacerbated the tendency of many States to limit avenues for regular migration, including family reunification, rendering irregular channels the only alternative for migration.[47]

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[41] Committee on the Elimination of All Forms of Discrimination against Women, general recommendation No. 27 (2010), on older women and protection of their human rights.

[42] Report of the independent expert on the question of human rights and extreme poverty (A/64/279), para. 40.

[43] http://www.opendemocracy.net/5050/heather-mcrobie/austerity-and-domestic-violence-mapping-damage.

[44] A/64/279 (see Note 42 above), para. 41.

[45] Jane Lethbridge, "Impact of the Global Economic Crisis and Austerity Measures on Women", Public Services International, 2012, p. 21.

[46] Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Political Economy of Women's Human Rights (A/HRC/11/6), para. 64.

[47] B. Ghosh, The Global Economic Crisis and Migration: "Where Do We Go From Here" (International Organization for Migration (IOM) and The Hague Process on Refugees and Migration (THP), 2011); See also Martin Ruhs, and Carlos Vargas-Silva, "The Labour Market Effects of Immigration", (The Migration Observatory, 1 January 2012). According to the President's Council of Economic Advisers, immigrants contribute USD 37 billion annually to the United States' economy. A recent study in New

61. Article 25 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that all migrant workers shall be treated on an equal footing with nationals in terms of remuneration, overtime, hours, weekly rest, holidays with pay, safety, health, termination of employment, and "any other conditions of work which, according to national law and practice, are covered by these terms".

62. The Committee on Economic, Social and Cultural Rights has highlighted the applicability of the right to work to migrants, recalling that "the principle of non-discrimination as set out in article 2, paragraph 2, of the Covenant and in article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should apply in relation to employment opportunities for migrant workers and their families". The Committee stressed that: "States parties are under the obligation to respect the right to work by, inter alia, prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees, members of minorities and migrant workers" (general comment No. 18, paras. 18 and 23).

63. According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 27), all migrant workers and members of their families shall enjoy in the State of employment the same treatment as nationals regarding social security, insofar as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. States should also examine the possibility of reimbursement of contributions when the applicable legislation does not allow migrant workers a benefit.

64. While in some cases the possibility of a differential level of social security or social protection may exist, in principle, States cannot arbitrarily exclude migrant workers from social security and social protection schemes. The principle of equality and prohibition of discrimination on the basis of nationality also applies to the right to social security, including social insurance and social protection. Migrant workers participate in the workforce and the economy of States of employment, and thus usually contribute to social insurance schemes, benefiting the whole range of schemes as right-holders. Even when not participating in contributory schemes, migrant workers contribute to social protection schemes and programmes, at the very least by paying indirect taxes. In addition, migratory status, either documented or undocumented, should not be considered relevant when it comes to social protection schemes directed at alleviating extreme poverty or vulnerability.

65. The former Special Rapporteur on the human rights of migrants noted that in many cases "migrant workers, both regular and irregular (…) are employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services".[48] Their situation is exacerbated by the fact that access to social security often conditions access to other essential rights.[49] Possession of a social security number is typically required to enrol in schools or stay in long-term shelters. This penalizes irregular migrants, who cannot enter the system.

Zealand found that in 2006 overseas-born migrants contributed $8.1 billion to the New Zealand economy and consumed $4.81 billion in benefits and services. By contrast, New Zealand-born citizens contributed $24.76 billion and consumed $21.92 billion.

[48] Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, the Human Rights Council, (A/HRC/17/33/Add.3), para. 70.

[49] Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008), on the right to social security, para. 28.

C. Older persons

66. While the right to work is essential for the realization of other human rights and is an inherent part of human dignity, many societies have stigmatized older workers as unproductive, slow, more prone to disease, unfit to learn and a burden to work environments. Regardless of their fitness to work, older workers are often forced to retire. Access to loans, insurance, land or rent may be denied on the grounds of age or offered on unaffordable or unfair conditions, thus reducing the opportunities to engage in new or continue with productive activities. Older persons are often faced with poverty, including extreme poverty, as a consequence.[50] Older women are even more severely affected.

67. During periods of crisis and austerity, losing a job a few years before retirement age leads to fewer opportunities, unfair work conditions or contracts and diminished salaries, with dramatic implications for pensions, savings and quality of life in the long term. In some countries, older males cannot access social safety nets because they are considered fit to work. As a result they frequently find themselves in a difficult position where they are too old to find steady employment, but too young to be eligible for a pension.[51]

68. In 2010, the Special Rapporteur on the question of human rights and extreme poverty devoted a thematic report to social protection of older persons.[52] The Special Rapporteur noted that social protection comprises both social insurance and social assistance with due consideration to the true cost of living. She noted that the coverage gap most severely affects those living in extreme poverty, which includes an unduly large number of older persons. As the Special Rapporteur noted, the absence of adequate legal frameworks to underpin non-contributory social security schemes seriously threatens the beneficiaries' enjoyment of their human rights.

V. Conclusions

69. States have a positive obligation to ensure adequate financial regulation, as necessary to safeguard human rights.

70. Many States have responded to the recent global financial crisis with austerity measures that significantly cut social sector spending. This has had an adverse impact on standards of living. Public investment in essential services has declined. Cuts in public sector employment and in funding for social safety nets have resulted in the denial or infringement of economic, social and cultural rights, especially for populations that are already marginalized or at risk of marginalization and in some cases may violate the prohibition on discrimination in the enjoyment of human rights.

71. To comply with their human rights obligations, States parties to the International Covenant on Economic, Social and Cultural Rights must justify austerity measures by demonstrating that such measures actually protect the rights outlined in the Covenant and particularly the rights of the most vulnerable. This requires States to demonstrate that all other alternatives have been exhausted and

[50] Report of the United Nations High Commissioner for Human Rights on the rights of older persons to the Economic and Social Council, 2012, (E/2012/5), para. 35.

[51] Ibid., para. 36.

[52] Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Report to the Human Rights Council (A/HRC/14/31).

that the measures are necessary, proportionate, respectful of minimum core obligations and non-discriminatory.[53]

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[53] Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012, http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf